

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**HAZEL M. ROBY, as Administratrix of** §  
**the Estate of RONALD TYRONE** §  
**ROBY, Deceased,** §

**Plaintiff,**

**V.**

**BENTON EXPRESS, INC., et al.,**

**Defendants.**

§ 87(2)(b)

**CIVIL ACTION NO.**  
**2:05cv494-B**


**PLAINTIFF'S MOTION TO STRIKE**  
**BENTON EXPRESS, INC.'S EVIDENTIARY SUBMISSION ATTACHED TO ITS**  
**RULE 12(b)(6) MOTION FOR PARTIAL DISMISSAL**

COMES NOW the Plaintiff in the above styled matter, by and through the undersigned counsel of record and hereby requests that this Court strike Defendant, Benton Express, Inc.'s ("Benton") all evidentiary submission in support of its Motion for Partial Dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedures and all factual allegations relied on outside the scope of Plaintiff's First Amended Complaint.

Under Federal Rules of Procedure 12(b)(6) the Court is required to look only at the four corners of the Complaint. Based on Benton's motion for partial dismissal, the only issue before the Court is whether on the face of the complaint the Plaintiff alleged compensable claim. Accordingly, all evidentiary submissions offered by Benton and all allegations of facts that are not contained in Plaintiff's First Amended Complaint, such as experts' reports/opinions should be stricken and disregarded by this Court.

For the foregoing reasons, Plaintiff respectfully requests that this Court strike all of

Benton's evidentiary submission and/or attachments to its Motion for Partial Dismissal.

  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing upon all counsel of record listed below by placing a copy of same in the United States Mail, first class postage prepaid, on this the 23 day of November, 2005.

  
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